

ASSEMBLY, No. 137

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

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District 24 (Morris, Sussex and Warren)

SYNOPSIS

Repeals “Statewide Non-Residential Development Fee Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the “Statewide Non-Residential Development
2 Fee Act,” amending P.L.2008, c.46, P.L.2009, c.90, and
3 repealing various parts of the statutory law.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. The following sections of law are repealed:
9 Sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through
10 C.40:55D-8.7);
11 Section 39 of P.L.2009, c.90 (C.40:55D-8.8);
12 Section 14 of P.L.2008, c.46 (C.52:27D-329.8); and
13 Section 41 of P.L.2009, c.90 (C.52:27D-320.1).
14

15 2. Section 40 of P.L.2009, c.90 (C.52:27D-311.3) is amended
16 to read as follows:

17 40. The portion, if any, of the affordable housing obligation of a
18 municipality attributable to a particular non-residential development
19 shall be reduced or eliminated if:

20 a. **【the collection of fees under sections 32 through 38 of**
21 **P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) is effectively**
22 **suspended for a period of time pursuant to that law; and】** (Deleted
23 by amendment, P.L. _____, c. _____.)

24 b. the Council on Affordable Housing, in consultation with the
25 Department of Community Affairs, has made a determination
26 within two years of the effective date of P.L.2009, c.90 (C.52:27D-
27 489a et al.), that there are insufficient funds in the "New Jersey
28 Affordable Housing Trust Fund," or through other State or federal
29 housing subsidies available to a municipality to assist in the
30 production of such housing units **【, in the same amount as would**
31 **have been collected if not for the suspension thereof, pursuant to**
32 **sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through**
33 **C.40:55D-8.7)】** by the date of the determination.

34 c. Nothing in P.L.2009, c.90 (C.52:27D-489a et al.) shall be
35 construed to affect the municipal obligation to provide a realistic
36 opportunity for its projected fair share of the regional housing need
37 as determined by the Council on Affordable Housing in accordance
38 with the provisions of the "Fair Housing Act," P.L.1985, c.222
39 (C.52:27D-301 et al.).
40 (cf: P.L.2011, c.122, s.3)
41

42 3. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to
43 read as follows:

44 8. a. The council may authorize a municipality that has
45 petitioned for substantive certification, or that has been so
46 authorized by a court of competent jurisdiction, and which has

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】 in the above bill is
not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 adopted a municipal development fee ordinance to impose and
2 collect development fees from developers of residential property, in
3 accordance with rules promulgated by the council. Each amount
4 collected shall be deposited and shall be accounted for separately,
5 by payer and date of deposit.

6 A municipality may not spend or commit to spend any affordable
7 housing development fees [], including Statewide non-residential
8 fees collected and deposited into the municipal affordable housing
9 trust fund,] without first obtaining the council's approval of the
10 expenditure. The council shall promulgate regulations regarding
11 the establishment, administration and enforcement of the
12 expenditure of affordable housing development fees by
13 municipalities. The council shall have exclusive jurisdiction
14 regarding the enforcement of these regulations, provided that any
15 municipality which is not in compliance with the regulations
16 adopted by the council may be subject to forfeiture of any or all
17 funds remaining within its municipal trust fund. Any funds so
18 forfeited shall be deposited into the "New Jersey Affordable
19 Housing Trust Fund" established pursuant to section 20 of
20 P.L.1985, c.222 (C.52:27D-320).

21 b. A municipality shall deposit all fees collected[, whether or
22 not such collections were derived] from fees imposed upon [non-
23 residential or] residential construction into a trust fund dedicated to
24 those purposes as required under this section, and such additional
25 purposes as may be approved by the council.

26 c. (1) A municipality may only spend development fees for an
27 activity approved by the council to address the municipal fair share
28 obligation.

29 (2) Municipal development trust funds shall not be expended to
30 reimburse municipalities for activities which occurred prior to the
31 authorization of a municipality to collect development fees.

32 (3) A municipality shall set aside a portion of its development
33 fee trust fund for the purpose of providing affordability assistance
34 to low and moderate income households in affordable units
35 included in a municipal fair share plan, in accordance with rules of
36 the council.

37 (a) Affordability assistance programs may include down
38 payment assistance, security deposit assistance, low interest loans,
39 common maintenance expenses for units located in condominiums,
40 rental assistance, and any other program authorized by the council.

41 (b) Affordability assistance to households earning 30 percent or
42 less of median income may include buying down the cost of low
43 income units in a municipal fair share plan to make them affordable
44 to households earning 30 percent or less of median income. The
45 use of development fees in this manner shall not entitle a
46 municipality to bonus credits except as may be provided by the
47 rules of the council.

1 (4) A municipality may contract with a private or public entity
2 to administer any part of its housing element and fair share plan,
3 including the requirement for affordability assistance, or any
4 program or activity for which the municipality expends
5 development fee proceeds, in accordance with rules of the council.

6 (5) Not more than 20 percent of the revenues collected from
7 development fees shall be expended on administration, in
8 accordance with rules of the council.

9 d. The council shall establish a time by which all development
10 fees collected within a calendar year shall be expended; provided,
11 however, that all fees shall be committed for expenditure within
12 four years from the date of collection. A municipality that fails to
13 commit to expend the balance required in the development fee trust
14 fund by the time set forth in this section shall be required by the
15 council to transfer the remaining unspent balance at the end of the
16 four-year period to the "New Jersey Affordable Housing Trust
17 Fund," established pursuant to section 20 of P.L.1985, c.222
18 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-
19 329.1 et al.), to be used in the housing region of the transferring
20 municipality for the authorized purposes of that fund.

21 e. Notwithstanding any provision of this section, or regulations
22 of the council, a municipality shall not collect a development fee
23 from a developer whenever that developer is providing for the
24 construction of affordable units, either on-site or elsewhere within
25 the municipality.

26 **【This section shall not apply to the collection of a Statewide**
27 **development fee imposed upon non-residential development**
28 **pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1**
29 **et seq.) by the State Treasurer, when such collection is not**
30 **authorized to be retained by a municipality.】**

31 (cf: P.L.2008, c.46, s.8)

32
33 4. This act shall take effect immediately.
34
35

36 STATEMENT

37
38 This bill would repeal the "Statewide Non-Residential
39 Development Fee Act," enacted as sections 32 through 38 of
40 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), which
41 established a Statewide non-residential development fee charged by
42 all municipalities for non-residential construction or improvements,
43 at a rate of two and one-half percent of the equalized assessed value
44 of land and improvements for all new non-residential construction
45 on unimproved lots, and at a rate of two and one-half percent of the
46 increase in equalized assessed value for additions to existing
47 structures to be used for non-residential purposes.

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1 The bill also repeals, and amends, several statutes that reference
2 the “Statewide Non-Residential Development Fee Act.”